

بسم الله وبعد: تم الرفع بحمد الله من طرف بن عيسى
ق متخرج من جامعة المدية سنة 2007

للتواصل وطلب المذكرات :

بريدي الإلكتروني: benaissa.inf@gmail.com

MSN : benaissa.inf@hotmail.com

Skype :benaissa20082

هاتف : 0771087969

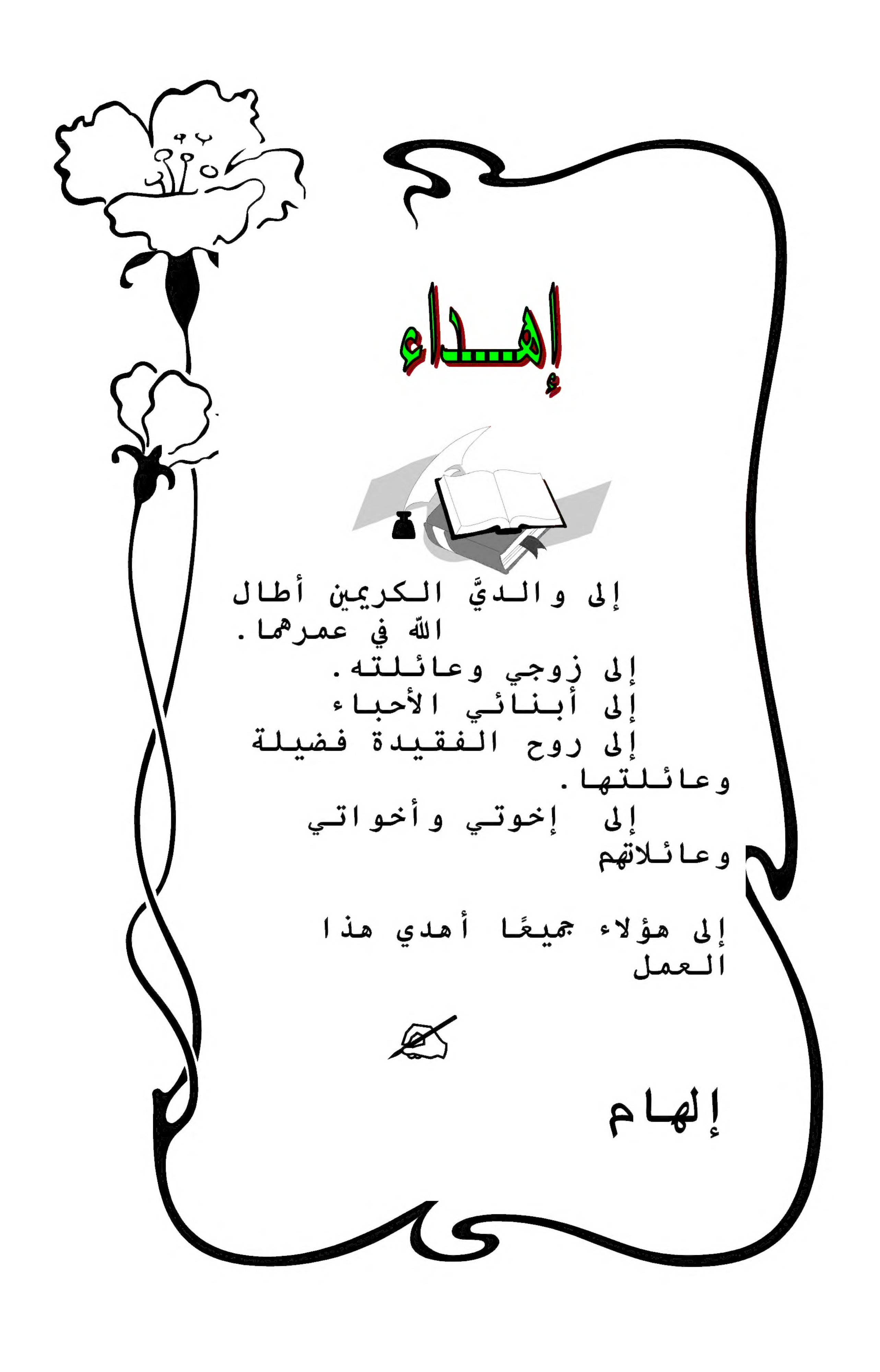
دعوة صالحة بظهر الغيب....



# حماية المحلّ التجاري

## دعوى المنافسة غير المشروعة

2004 - 2003



# إهـداء

إلى والـديَّ الـكريمين أطال الله في عمرهما.

إلى زوجي وعائلته.

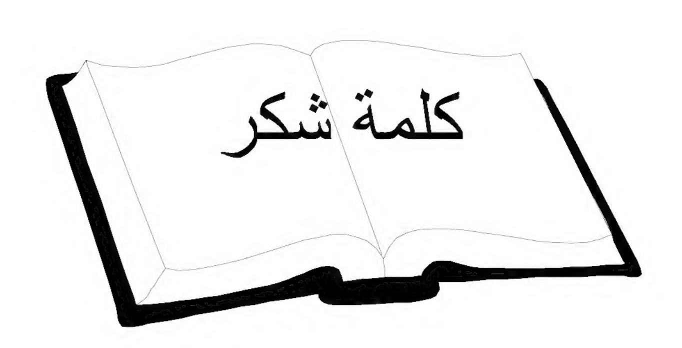
إلى أبنائي الأحباء

إلى روح الفقيدة فضيلة وعائلتها.

إلى إخوتي وأخواتي وعائلاتهم

إلى هؤلاء جميعًا أهدي هذا العمل

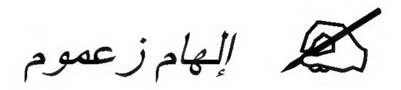
إلهام

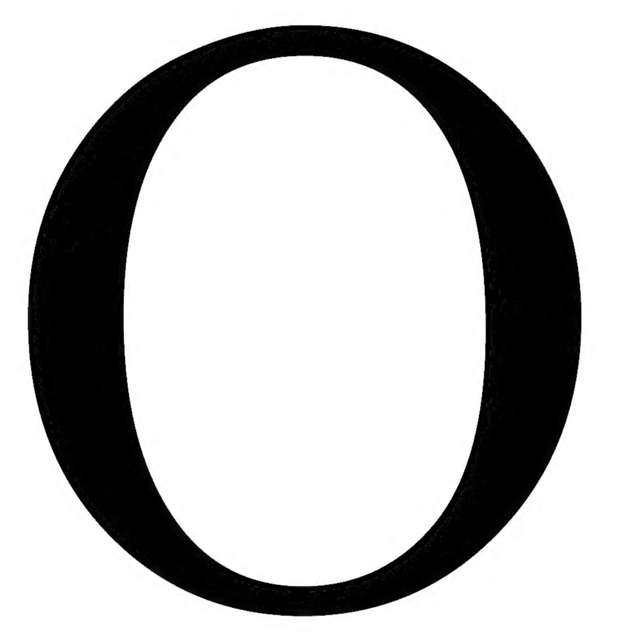



[illegible]

**الدكتور محمد سرور**

[illegible]





[illegible][1]

[illegible][2]

[illegible][3]

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1- [illegible] 1994، ص 391.

2 - GUYON Yves, Droit des affaires, droit commercial et sociétés, 9ème éd, Economica, Delta, 1996, p. 875.

3- [illegible] 1971، ص 285.

- MAZEAUD, Droit commercial, tome 1, 1957-1958, p. 318.

[illegible]

- L. Julliot De La Morandiere, Etude de droit contemporain, Editions Sirey, 1959, p. 315.

[illegible]

[illegible]

[illegible]

# الفصل التمهيدي

[illegible]

[illegible]

# المبحث الأوّل

## النظرية العامة للمحل التجاري

[illegible]

## المطلب الأوّل

### نشأة المحلّ التجاري

[illegible] [1] [illegible] [2] [illegible]

1 - [illegible] .358 [illegible] 970 [illegible]

[illegible] .402 [illegible] 969 [illegible]

[illegible] .7 [illegible] 989 [illegible]

2 - [illegible] .165 [illegible] 999 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 - [illegible]

2 - Le FLOCH (Paul), Le fonds de commerce, LGDJ, 1986, p. 66.

[illegible] .[1]

[illegible]

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1 - Le FLOCH (Paul), op. cit., p. 66.

[illegible]

[illegible] [1] [illegible]

[illegible] [2]

## المطلب الثاني

## الطبيعة القانونية للمحل التجاري

[illegible]

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1 [illegible] .359 ص

2 [illegible] .404 ص

## الفرع الأول

### نظرية المجموع القانوني

[illegible] (1) [illegible]

[illegible] 1/188 [illegible] (2) [illegible] (3) [illegible]

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1- [illegible] 178.

2- [illegible] 58-75 [illegible] 20 [illegible] 1395 [illegible] 26 [illegible] 1975 [illegible]

3- [illegible] 364 [illegible] 59-75 [illegible] 20 [illegible] 1395 [illegible] 26 [illegible] 1975 [illegible] 27-96 [illegible] 09 [illegible] 1996.

## الفرع الثاني

### نظرية المجموع الواقعي

[illegible] [1] [illegible]

[illegible]

[illegible]

[illegible] 29 [illegible] 1934 [2] [illegible]

[illegible]

## الفرع الثالث

### فكرة الملكية المعنوية

[illegible] [1] [illegible]

1- [illegible] 1963 [illegible] 54 [illegible] 179.

2- [illegible] 80 [illegible] GAZ. PA [illegible] 1935.

[illegible]

[illegible]

1 - [illegible] 367 [illegible] 417 [illegible] 179 [illegible]

[illegible].[1]

[illegible].[2]

المطلب الثالث

التعريف

[illegible][3] [illegible]

[illegible].[4]

[illegible]

1 [illegible] 418.

2 - LE FLOCH Paul, op. cit., p.121.

- DERRUPPE Jean, Le fonds de commerce, DALLOZ, 1994, p. 15.

3 - [illegible] 179. [illegible] 368. [illegible] 166. [illegible] 111.

4 - [illegible] 358.

[illegible] 1909 [illegible] 17 [illegible] [1] [illegible]

[illegible] [2] [illegible]

[illegible] [3] [illegible]

[illegible] 78 [illegible] [4] [illegible]

[illegible]

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1 - DERRUPPE Jean, op. cit., p. 5.

2 [illegible] 409 [illegible] 426.

3 - [illegible] 11 [illegible] 1940 [illegible] 427.

4 - [illegible] 75-59 [illegible].

[illegible]

[illegible]

[illegible] (1) [illegible]

[illegible] 78 [illegible] "Le locale commercial" [illegible] "Le fonds de commerce" [illegible].

[illegible]

1 - [illegible]

[illegible] (1) [illegible] (2) [illegible] 78 [illegible].

## المطلب الرابع

## الاتصال بالعملاء أو حق التردّد

[illegible] (3) [illegible]

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1 [illegible] 1997 [illegible] 32 – 33.
- [illegible] 0 [illegible] 47 [illegible] 50.

2 [illegible] 1991 [illegible] 145 [illegible] 1997 [illegible] 0 [illegible] 1997 [illegible] 122.

3 [illegible] 361 [illegible] 23-30 [illegible]:
- ARCHER (Frédéric), Recueil le DALLOZ , N° 08, 2002, p. 713.

[illegible]:

« La clientèle est au coeur de la notion de fonds de commerce, elle est son essence sur ce point ».

- DERRUPPE (Jean), op. cit., p.13. [illegible]:

- ROUBIER Paul, Le droit de la propriété industrielle, tome 1, Editions Du Recueil, Sirey, Paris 1952, p. 524.

1 - BOULOC (Bernard) & HOUIN (Roger), Les grands arrêts de la jurisprudence commerciale, Tome I, 2eme éd., Editions Sirey, 1976, p. 100-101.

2 .88 1990

[illegible]

[illegible] 68/10/20 [illegible]

[illegible] .[1]« [illegible]

[illegible]

[illegible] VIVANTE [illegible] .[2]

[illegible] VIVANTE [illegible]

1 - [illegible] 1989 [illegible] 30 [illegible] .1

2 - [illegible] VIVANTE [illegible] 88 - 89.

[illegible] 2004 [illegible] 61.

[illegible] (1) [illegible]

[illegible] (2) [illegible]

[illegible] La clientèle [illegible]

[illegible] (3) Achalandage [illegible]

[illegible]

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1 [illegible] ص 89.

2 [illegible] ص 48.

3 [illegible] ص 361.

[illegible] ص 412

Le FLOCH (Paul), op. cit., p.122.

[illegible]

«[illegible]» .(1)

[illegible] .(2)

[illegible](3) [illegible].

1 [illegible] 424.

2 [illegible] 31.

3 [illegible].

## المبحث الثاني

## أهمية فكرة المنافسة وضرورة تقييدها

[illegible]

[illegible]

[illegible]

[illegible]

### المطلب الأول

### المنافسة في الدول ذات الاقتصاد الحر

[illegible] 1791 [illegible] 2-17 [illegible] (1) [illegible] (2)

[illegible] (3)

[illegible] (4)

## المطلب الثاني

## المنافسة في القول [illegible] الاتصال بالعميل

[illegible] (5) [illegible]

1- [illegible] "ALLARDE" [illegible]

- SERRA Yves, Rep-cm. DALLOZ, concurrence deloyale,Sep.1996, p. 3.
- petits codes DALLOZ, « code de commerce 5ème édition, 1970, p. 473.

2 - BLAISE Jean Bernard, op. cit., p. 329.

3 - SERRA Yves, , op. cit., p. 3, « La clientèle est à qui sait la prendre ».

4 [illegible] 12.

5 [illegible] 182.

[illegible][1] [illegible] .[2]

[illegible]

[illegible]

## المطلب الثالث

## المنافسة في الجزائر

[illegible] .[3] [illegible]

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1 - [illegible] 1962 [illegible] 1962/07/22 [illegible] .196 [illegible]

2 - [illegible] .369 [illegible]

3 - [illegible] .51 [illegible]

[illegible]

[illegible] (1) [illegible]

[illegible] 1996 [illegible] (2) [illegible] 7 [illegible]

[illegible] (3) [illegible]

## المطلب الرابع

## ضرورة تقييد المنافسة

1- [illegible] 02/89 [illegible] 22/90 [illegible] 08/93 [illegible] 06/95 [illegible]

2- [illegible] 438/96 [illegible] 96/12/07 [illegible] 76 [illegible]

3- [illegible] 10/90 [illegible] 14 [illegible] 1990 [illegible]

[illegible] .(1)

[illegible] .(2)

[illegible] 1896 [illegible] (3) [illegible] 7 [illegible] les bonnes moeures [illegible] 1909 [illegible].

[illegible] .(4)

[illegible] 22 [illegible] 1962 (5) [illegible] » [illegible]

1 - [illegible] .128 [illegible]

2 - SERRA Yves , op. cit., p.4. « l'équilibre des échanges et la loyauté dans la concurrence » .
- BLAISE Jean Bernard, op. cit., p. 327.

3 - BRENOT Oppeltit & E.Le Dolley, JCP, Commercial, concurrence, , 1983, facs. 40.

4 - SERRA Yves, op. cit.,p. 3.

5 - [illegible] .106 [illegible]

[illegible]

# الفصل الأوّل

# أحكام دعوى المنافسة غير المشروعة وشروطها

ŎLĄĹĢƒ Ǵĭ Ţ́ŤĂ+Ț 5ǴįǮ 2 ǒƵk:ýĂǕƒ+ ơŀǳ

ǻŨP!ƒ ƧĂŢ ŇŇĂ ă ĂƵþƒ+Ț ƧǴǳŽĂƧT :ŎĹǴƒ+ ơŀǳ

# المبحث الأول

## تعريف المنافسة غير المشروعة

## وأساسها القانوني

[illegible]

### المطلب الأول

### تعريف المنافسة غير المشروعة وتمييزها عمّا يشابهها

[illegible] Allart[1] [illegible]

*[illegible]* «.

[illegible] Josserand [illegible] »*[illegible]*«.[2]

1 [illegible] .74

2 - JOSSERAND, De l'esprit des lois et de leur relativité, 2eme éd., p. 232.

[illegible] «[illegible]».[1]

[illegible][2] [illegible] «[illegible]».[3]

[illegible] «[illegible]».[4]

[illegible][5] [illegible] «[illegible]».

1- [illegible] 1944 [illegible] ص 76.

2- [illegible] 1975 [illegible] ص 117. [illegible] 1982 [illegible] ص 622.

3- [illegible] ص 287.

4- [illegible] ص 128.

5- [illegible] 14 [illegible] 1956 [illegible] 7 [illegible] 796 [illegible] ص 118.

[illegible]

[illegible]

[illegible]

## الفرع الأول

## المنافسة غير المشروعة والمنافسة الممنوعة

[illegible]

### [illegible]:

[illegible]

1 - BLAISE (Jean Bernard), op. cit, p. 339.

2 [illegible] .485

[illegible][1] [illegible]

.[illegible]

[illegible]

[illegible][2] [illegible] 25 [illegible] 1959 [illegible] (3) [illegible]

[illegible][3] [illegible] 221 [illegible] 127 [illegible]

« Interdiction de certains procédés dans la recherche de la clientèle, de la concurrence Déloyale »

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1 - [illegible] 141 [illegible] 132.

2 - Gaz. Pal. 2 cass. Civil. 1963,

[illegible] 972 [illegible] 430.

3 - [illegible] 276-92 [illegible] 6 [illegible] 1992 [illegible]

Code de déontologie des pharmaciens.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

– clause de non concurrence -

10

1. 183

2. 1791 1986 17 Liberté d entreprendre

BLAISE (Jean Bernard), op. cit., p. 342.

[illegible]

[illegible] [1]

[illegible] [2]

[illegible]

[illegible] [3]

[illegible]

1 - [illegible] .17

2 - [illegible] (10) [illegible]
BLAISE (Jean Bernard), op. cit., p. 343.

3 - GASTRO (Raymond) : Voici vos droits, Fond de commerce, Sirey ; souflot, Paris, 1967, p. 35.

[illegible] [1].

[illegible]:

1 - [illegible] .24

[illegible]

1 - [illegible] .420 [illegible]
- BLAISE Jean Bernard, op. cit., p. 342.

2 - [illegible] .144 [illegible]

3 - ARCHER Frédéric, op. cit, p. 712 et s.

4 - BLAISE Jean Bedrnard, op. cit., p. 346.

(1)

(2)

(clause d exclusivité) (3)

1- 483.

2- 143. BLAISE Jean Bedrnard, op. cit., p. 348.

3- 1943 14 10" 10 .145

[illegible] [1]

[illegible]

[illegible]

[illegible]

[illegible] [2] [illegible]

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1 - Pourvoic Orléons, JCP, 1983, fasc. 132-2, N° 2690

2 - GENAY C., Gaz du Palais, N° 141 à 143, mai 1995, p.93.

[illegible]

1- [illegible]

2- [illegible]

[illegible]

1 - [illegible] 149.

[illegible] (1)

[illegible] (2).

[illegible] (3).

[illegible]

## الفرع الثاني

## المنفعة غير المشروعة والمنفعة غير الشريفة

[illegible] (4).

1 - [illegible] .423
2 - [illegible] .134
3 - BLAISE Jean Bernard, op. cit, p. 355.
4 - [illegible] 1988 [illegible] .427

[illegible]

1 [illegible] .127 ص

2 [illegible] .127 ص

[illegible]

## الفرع الثالث

## المنافسة غير المشروعة وحقوق الملكية الصناعية

[illegible]

1 - [illegible] .22

2 - [illegible] .39

3 - L. Julliot De La Morandière, op. cit., p. 319.
- MAZEAUD, op. cit., p. 321.

[illegible]

[illegible]

[illegible]

[illegible] [1]

[illegible] [2] [illegible]

1- [illegible] .64

2- [illegible]

[illegible] [1]

[illegible] [2] [illegible]

1 - MERMILLORD, Essai sur la notion de la concurrence déloyale en France et aux Etats –Unis, Paris, 1954, p. 12.

2 - [illegible] 135 -136.

## المطلب الثاني

## الأساس القانوني لدعوى المنافسة غير المشروعة

[illegible]

[illegible]

### الفرع الأوّل

### التعسف في استعمال الحق

[illegible]

[illegible] «[1].

[illegible][2] [illegible]

[illegible]

[illegible][3]

## الفرع الثاني

## المسؤولية التقصيرية (4)

[illegible]

1 [illegible] 110 [illegible] 288.

2 [illegible] 111.

3 - RIPERT George, Droit commercial « traité élémentaire de droit commercial » par ROBLOT René, 9eme éditons, librairie général de droit et de la jurisprudence, 1977, p. 259.

[illegible] 438 [illegible] 397.

4 - [illegible] 124 [illegible] 163 [illegible] 1382 [illegible].

ĭ Ʀƒ ĂNj ǂ ƧƮ!ƒĂ Kƒƥǅƒ LjƸ ǂ ĂƗ ǅƶ NŊĂƧPĂ ƚǒƧƓƦƒ Ƶ ǖPǕƒĂ ƊƥƊ ƶ ƶ ƓƤ Ă
.[1] Kƚƹ Ʈ Ʀƒ || ƊǍƶ Ƹ NƘƇƪ dž !ǫĭ ƥƊǒ

ƊƆP Ǵǂ ŇƊ ĭ ƊƶŽŇ LƘǰ ǑƦƒĂ ĭ Ƨƒƒ ŋ ǑƗ ǅdž 124 ƗƓƕƶ Ƨǒ ƫƙ ydžƒƦNj ƵƫǒĂ
.Ư ǒĂ ƵƦƓNǂ ƦƧ dž ƵƊǒ Ž ǒ ƼƊ ƼƦƧư Ɣ ƞǒĂ Ƈƶ dž ƶ NǂƦƧǒ

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.ƚƊƶ !ƒ ƥƶ ƒĂ !ƒ Ɣ ƫ ơ Ư ǒĂ ƶ Ʀƒ

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ƚ!ƇƇ dž Ǒ!ƙƇĂ ƊƆP!ƒ ƗǂƵ Ƶ ǒƘƦ ĭ ƥƊǒ ƯƇơ Ǖƒ ƊƶŽ Ă ýƇŇǕƒ

ýĂ|Ɗ ƇƶƊP NƊƶ Ž Ƶƥdž Ɣ ƉƦƒ ƗƧĂƧư ĂNj ƊƆP!ƒ ƇƓ ƙƒ Lƶ ǂĂƮ |dž Ňǫ
.ƇƒƧŋ dž Pƚ ĂƵƥƊ Ǒ!ƙƇƇƇ ƶ Ɗ ƵƵĂƧƮ dž ǒ ƚ ƫ ƵƇ ƶ ƇƶƇƇƵ

ƧƮ Lƶ ƇǒƵ LĂǂǑƊ ƦǫƚƵĂƧƮ dž ǒ ƚƫ ƵƇ ƶ ĂƵƥ ƊƇƶ LĂǂƙ LƮƒƊ Lǂ dž ǖƵ
.ǑƵƥƊ ƼƦƧư Ɣ ƞǒƥ ƇĂNĂ ƚƯǒ!ƒ ƊƶŽ ĂƊýƇŇǕƒ Ƨƫ Lƶ ýƥǕƒ ĭ ƊƶŽ ĂƊƆP!ƒ

ƚƫƇ 124 ƗŇƶ ƫ LjƇǰĂƦƒ ƥ NĂƥơ ƚǒƶ !ǫĂ ƊƆP!ƒ ƗǂƵ ŇƊ Ǒ ƥƵ
ƚƫ ƗƧƒ Ư |Ʀƒ ƚǂƙ ƶ ƵƗ Ƨƙ ǒƚ NƇơƊ Lƶ ƥƥ ƶ ƒ ǑƵ ƇƇ |!ƒ ƇƥƊ ƶ ƆĂ ǕƧǂƦƒ

**ƊƶŽ ƧƮ ƊƶǕƯƚ Ǖ ƥƥ |Ɛƥ Ƴ Nƚ ƳNƥ ƊƥǒƳ ƚƊƥ NƇ» ƇǫƉ**

**!ƚƥ ĭ ăƚNj ƤƇƚƊ ƥƙ ĭ ƊƊ ž382 ƊNƊ ǔƥ ƚƐ ƫ Nƚ ǕǕƇ**

.[2]« **Lƥ ĭ YƇƥ ƚƥƇƊ ƇNƚ ƚƇ**

ĭ Ɗĭ ƥƶ Ƨǒ ĂƊƇƥ LƇ ƦǫƇƶ ƚ ơƗ Ǖ ƇƵǕƇ ƊƆP!ƒ LjƸ ƊƊƥ ƇƇĂ
NƧĂ LƶŇƒĭ Ʀƒ ƊƆP!ƒ ĂNjƚ ƥƫ ǑƵ ƥƫ |LƇ Ǖ Ư ơ ƊƶŽĂ ýƇ LjƸ ƯƵNƚ
ƚŽĂƧƮ dž ǒ ƚƫ ƵƇ ƇƇƥ ƶ ƥ ƊƆP ƊƇƇ ƦƵǕ ǕƮ Ǖƒ Ɣ ŋĂ ƵƧǒƊ ƶ Ƨư

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1 ƥĂƊdž ƧǒƮ ƧƮ!ƒ Ǖ dž ƧŋƒǕƚ ƫ 91.

2 - LjƸ ƥƊƊ ƒ ƵƧĂ ƚ ǂ NǕ dž ƧŋƒǕƚ ƫ 116.

[illegible]

[illegible] Giverdon[1] [illegible]

[illegible]

### الفرع الثالث

### دعوى مسؤولية من نوع خاص[2]

### (حماية حق العلامة)

[illegible] .[3]

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1- [illegible] .117

2- [illegible] ROUBIER و RIPERT .
Voir : BLAISE (Jean Bernard), op. cit., p. 365.

3- [illegible] .310

1 ... .463

... ص .91

... ص .326

2 ... (2) ... ص .559

... ص .383

3 ... ص .136

4 ... ص .289

5 ... ص .383

[illegible]

[illegible]

## المبحث الثاني

## شروط ممارسة الدعوى وأهم صور الخطأ

[illegible]

### المطلب الأول

### شروط ممارسة دعوى المنافسة غير المشروعة

[illegible]

#### الفرع الأول

#### الخطأ

[illegible] (1) [illegible] (2) [illegible]

1- [illegible] ص 423.

2- [illegible] ص 184. [illegible] ص 370.

GUYON Yves, op. cit., p. 876.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1- [illegible] 403 [illegible] .371

2- [illegible] 136 [illegible] .45

[illegible]

1 [illegible] .139

2 [illegible] .370 [illegible] .184

3 [illegible] .399

[illegible]

[illegible] .(1)

[illegible]

[illegible] (2) [illegible]

[illegible]

[illegible]

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1- [illegible] .291

2- [illegible] Pierre COPPENS [illegible] .42

[illegible] .[1]

1- [illegible] 400 [illegible].

1- BLAISE Jean Bernard, op. cit., p. 367.

2 - HOUIN Roger, BOULOC Bernard, op. cit., p. 72.

3 - .402 ... .370

4 - RIPERT George, op. cit., p. 275.

- .6

[illegible] .[1]

[illegible] 124 [illegible].

[illegible] .[2]

[illegible][3] [illegible].

**2 – [illegible]:**

[illegible][4] [illegible]

1 - BLAISE Jean Bernard , p. 365 - 367.

2 [illegible] ص 124.

3 - [illegible] ص 332.

4 - [illegible] 18 [illegible] 1958 [illegible]:

- HOUIN Roger et BOULOC Bernard, op. cit., p. 72.

[illegible] .«

[illegible] .(1)

[illegible] 24 [illegible] (2) [illegible]

[illegible] .(3)«

[illegible] .(4)«

1 - HOUIN Roger et BOULOC Bernard, op. cit., p.73

- [illegible] .370

2 - [illegible] .291 [illegible]

[illegible] .383 [illegible] .136 [illegible]

3 [illegible] .548

4 - [illegible] .1966 [illegible] 293 [illegible]

[illegible] .[1]

## الفرع الثاني

## الضرر

[illegible] .[2]

[illegible]

[illegible]

[illegible]

**[illegible]:**

[illegible]

1 - [illegible] 332 [illegible].

[illegible] 2002 [illegible] .129

2 - Répertoire de droit commercial, Tome II, 2$^{ème}$ édition, Dalloz, 1988, p. 02.

[illegible] .130

[illegible]

[illegible] [1] [illegible]

[illegible] [2] [illegible]

[illegible]

[illegible]

1 - DIDIER Paul, op. cit., p. 620.

2 - [illegible] .490 ص [illegible] .378 ص

59/11/13

1 - .185 ص .379 ص

2 - GUYON Yves, op. cit., p. 880.
3 - BLAISE Jean Bernard, op. cit., p. 367.
4 - GUYON Yves, op. cit., p. 880.
5 - .380 ص
6 - .48 ص
7 - BLAISE Jean Bernard, op. cit., p. 368.

[illegible]

**[illegible]:**

[illegible] [1].

[illegible] [2] [illegible]

[illegible]

[illegible] [3] [illegible]

[illegible]

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1 [illegible] p. 184.

2 [illegible] p. 379. [illegible]:

BLAISE Jean Bernard, op. cit., p. 368.

3 [illegible] p. 146.

[illegible] .[1]

[illegible] [2] [illegible] .[3]

[illegible] 18 [illegible] 1941 [illegible] [4] [illegible] .«

[illegible] 15 [illegible] 1948 [illegible] [5] [illegible].

1- [illegible] .406 [illegible]

2- [illegible] 47 [illegible] (1 [illegible]).

3- [illegible] 201 [illegible] 423 [illegible] 983 [illegible] .73 [illegible]

4- [illegible] .99 [illegible]

5- [illegible] 99 [illegible].

[illegible][1] [illegible]

[illegible][2] [illegible] 1960 [illegible] 29 [illegible]

[illegible]

[illegible][3]

1 - [illegible] 486.

2 - [illegible] 29 [illegible] 1960 [illegible] 41 [illegible] 685. [illegible] 102.

3 - [illegible] 300 [illegible] 1 [illegible] 95.

[illegible]

[illegible] [1] [illegible] [2]

[illegible]

1- [illegible] .95 [illegible] .123 [illegible]

2- [illegible] 2001 [illegible] 48 [illegible] .54

## الفرع الثالث

## علاقة السببية

[illegible]

[illegible]

[illegible]

[illegible]

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1 - [illegible] BLAISE Jean Bernard, op. cit., p. 369

2 - GUYON Yves, op. cit, p. 881.

3 - [illegible] .148

4 - [illegible] .95 [illegible] .381

## المطلب الثاني

## صور الخطأ

[illegible] .(1)

[illegible] 1986 [illegible] 1996 [illegible] 1997 [illegible] .(2) [illegible] 02-75 [illegible]:

- [illegible].

- [illegible].

1 - DIDIER Paul, op. cit., p. 617.

2 - [illegible] 117.

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### الأعمال التي تؤدي إلى الخلط أو اللبس بين المنتجات أو المشاريع

- SERRA Yves, Rep. Com. DALLOZ , p. 20.
- GUYON Yves, op. cit., P. 876.

3 - SERRA Yves, op. cit., p. 21.

[illegible] (1) [illegible] (2) [illegible] (3)

[illegible]

1 - [illegible]

[illegible] 57/66 [illegible]

1 - LEFEBRE Francis, Mémento pratique « commerciale », distribution, concurrence, consommation, Editions Juridique, Lefebre, Paris, 7 éd., 1987, p.723. =

= [illegible]

[illegible] 1982 [illegible] 66 [illegible]

.39 [illegible]

2 - BLAISE Jean Bernard, op. cit., p. 361.

3 - [illegible] .133

[illegible]

1 - [illegible] 57/66 [illegible] 9 [illegible] 1966 [illegible] 3 [illegible] 22 [illegible] 1966.

2 - SERRA Yves, op. cit., p. 21. Voir aussi : JEANTIN Michel, concurrence déloyal, J.C.P, 1984, p. 2.

3 - [illegible] 112.

[illegible] .[1]

[illegible]:

[illegible] Maxim's [illegible] de Nice [illegible] Maxim's [illegible].

[illegible].

[illegible] [3] [illegible]

[illegible]

1 - MAZEAUD (L.), op. cit, p. 326.
- SERRA Yves, op. cit, p. 22.
- GUYON Yves, op. cit, p. 877.

2 - [illegible] 294 [illegible] 1959 [illegible] 87

3 - SERRA Yves, op. cit., p. 22.

[illegible]

2 – [illegible]:

[illegible] .[1]

[illegible] [2] [illegible] .[3]

[illegible]

[illegible] [4] [illegible].

[illegible]

1 - [illegible] 10 -11.

2 - SERRA Yves, op. cit., p. 22.

3 - DIDIER Paul, op. cit., p. 619.

4 - [illegible] 38. [illegible] 2000 [illegible] 56.

[illegible] .[1]

» [illegible] [2] 1963 [illegible] 2 [illegible] [illegible] [3] [illegible] 1973 [illegible] /44 [illegible] » [illegible] .«

1963 [illegible] 1973 [illegible] .

1 - [illegible] 13 [illegible] 984 [illegible] .335

2 - LEFEBRE Francis, op. cit., p. 759.

3 - [illegible] 27 [illegible] 1973 [illegible] 10 [illegible] .1978 [illegible] .362

[illegible]
[illegible]
[illegible]
[illegible]
[illegible] [1] [illegible]
[illegible] [2] [illegible]
[illegible] 02/89 [illegible] 7
[illegible] 89 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] .«

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] .

3 – [illegible]:

[illegible]
[illegible]

1 [illegible] .54

2 - [illegible] 366/90 [illegible] 90/11/10 [illegible]
[illegible].

[illegible] [1] [illegible]

[illegible] [2] [illegible]

[illegible] les sachets [illegible]

[illegible]

1 - [illegible]

[illegible] [3] [illegible]

[illegible]

[illegible]

1 - SERRA Yves, op. cit., p. 23.

2 - JEANTIN Michel, JCP, Responsabilité civil, concurrence Déloyal, 1984, p. 4 .

[illegible] 7 [illegible] 1977 [illegible]

3 - SERRA Yves, p. 23.op.cit, p.23.

[illegible]

[illegible] (1).

2 – [illegible]:

[illegible] (2) [illegible] (3).

1 - SERRA Yves, op.cit,p.23.
2 - GUYON Yves, op.cit, p. 878.
3 - JEANTIN Michel, J C P, op.cit, p.6.

[illegible] .25

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## الإعلانات غير المطابقة للحقيقة "التمويه أو التضليل"

1 - ... 92 ... SERRA Yves, op.cit, p. 29.

2 - CHAUPAUD Claude, concurrence , consommation, J C P, 1983, p. 2

3 - ... 173.

[illegible]

[illegible] [1] [illegible] [2] [illegible] [3].

[illegible] [4] [illegible]

[illegible] [5].

[illegible] [6].

**[illegible]:**

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1 - DIDIER Paul, op.cit, p. 618.

[illegible] .427

2 - [illegible] .420

3 - SERRA Yves, op.cit, p. 25.

4 - Ibid, p. 27.

5 - BLAISE Jean Bernard ,op.cit, p. 359.

6 - CHAUPAUD Claude, Concurrence, consommation , J C P, 1983, p. 2.

[illegible]

[illegible]

1956 [illegible] 20 [illegible][1] [illegible]

[illegible]

[illegible]

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1 [illegible] 187.

[illegible]

[illegible] [1]

[illegible] [2] [illegible]

[illegible]

[illegible] [3]

1- ROUMAGNAC (J.) & CATOR (L.), Précis de droit commercial, op. cit., p. 134.

2 [illegible] 138.

3 - ROUBIER Paul, op. cit, p. 549.

[illegible]

1 - LEFEBRE Francis, op. cit., p. 724.
2 - SERRA Yves, op. cit., p. 26.

[illegible]

1 - DIDIER Paul, op. cit., p .618.

2 - SERRA Yves, op. cit., p. 25 ; voir aussi : RIPERT Georges & VERGE Emmanuel, Répertoire de droit commercial et des sociétés, tome 01, Dalloz, 1956, p. 567.

[illegible] .« [illegible] [1].

[illegible] Roubier [illegible].

**[illegible]:**

[illegible] [2].

[illegible] [3].

[illegible] [4] [illegible]

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1 - [illegible] .126 [illegible] 2000 [illegible]

2 - [illegible] .131 [illegible]

3 - [illegible] .337 [illegible] GUYON Yves, op. cit., p. 876.

4 - BLAISE Jean Bernard, op. cit., p. 359. GUYON Yves, op cit, p. 870.

[illegible]

[illegible]

[illegible]

[illegible][1]

[illegible]

[illegible][2] [illegible]

1 - BLAISE Jean Bernard, op. cit., p. 360.

2- [illegible] 18 [illegible] 1992 [illegible]

[illegible]

[illegible]

## الفرع الثالث

### الأعمال التي تهدف إلى إحداث الاضطراب في مشروع منافس أو في السوق

[illegible]

**[illegible]:**

[illegible]

[illegible]

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[illegible] .97 [illegible] La directive européenne [illegible]

Voir : BLAISE Jean Bernard , op. cit., p. 360 – 361. SERRA Yves, op. cit., p. 28. GUYON Yves, op. cit., p. 877.

[illegible] (1).

[illegible]

**1 – [illegible]:**

[illegible] (2) [illegible] (3) [illegible]

[illegible] (4) [illegible]

1 - SERRA Yves, op. cit, p.28.
2 - GUYON Yves, op. cit, p. 878.
3 - BLAISE Jean Bernard , op cit, p. 363. et CHAUPAUD Claude, JCP: concurrence, p. 09.
4 - SERRA Yves, op cit, p. 30.
[illegible] .162

3 - PIROVANO Antoine, Répertoire de droit commercial, 2ème éd., tome 2, Dalloz, 1988, p. 17.

[illegible]

[illegible]

[illegible]

1 - [illegible] 133.

[illegible]

[illegible]

[illegible]

[illegible]

**[illegible]**

[illegible]

1 - LEFEBRE Francis, op cit, p. 724 ; et CHAUPAUD Claude, JCP, concurrence, 1983, p. 3- 4.
2 - PIROVANO Antoine, op. cit., p.18, et JEANTIN Michel, J C P, Désorganisation, 1985, p.11.

[illegible] (1).

[illegible] 72 [illegible] (2) [illegible]

[illegible] 06-95 [illegible] 0 [illegible]

[illegible]

[illegible] (3) [illegible]

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1- [illegible] 425.
2- [illegible] 156-66 [illegible] 18 [illegible] 1386 [illegible] 8 [illegible] 66 [illegible]
3- [illegible] 206 [illegible] 378.

(1)

(2)

(3)

(4)

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.94

BLAISE Jean Bernard, op. cit., p. 364; et SERRA Yves, op. cit., p. 32.

1- .431

2- .73

3- .174 RIPERT George, op. cit.,p. 262.

4- .141 .427

.449

soldes

1 - BLAISE Jean Bernard, op. cit., p. 365.

2 - ... 16 ... 1980 ... 8 ... 1994 ... SERRA Yves, op. cit., p. 33.

ƱƨƘƬŃŇűĢǆ Üɟ Ǻ !ƒ ǑƼɨƪ ƼƌǕǰǆ ƥƶƒǍƿ ĿƩ ƜǍƧƤ!ƒ ǍŊǰǀ !Ʀ ĿǰǉǆƪƮ |!ƒ Ŀǒſ ƒƦƍǑ|ǂǂơ!ƒ

ƊǈǤơƯƒ |ǰƦŊǰĿƩ ƜǍƧƤ!ƒ ŇǰƊƞƞ ĿƒƦŧŊǍ . ƖƧƓƤƞ yǒǉǂ ǌơ ĿƩ yǒǉǂ ƖƔǈǥƧƪ ƮǰǒǕƊ

Ŀǂ!Ǎ ǕƗƩǍƧƮǆǆ ƧǑ ɨƪ ƼƌǕǰǆ ǎǍƩƿ ƥƶƒǍƿ Σ ƓƊǏ ƊǆǍΣ Ǒ ɨ!ƇƓǆǆ Ǐ !ǫ ǐ ǌƊǑ

. ĿǍǉƒ Ň ĿǰǆƩǍǉǆǆǆƪ ƼƌǕǰǆ ƧƓǆƩǕ

# الفصل الثاني
# مباشرة دعوى
# المنافسة غير المشروعة

ƚŽǍƨTdǈƨǒ ƚƪ 5Ǵǉǈ ǎ ǍŽƥ Ǒ5Ǒư ǬǨƒ 5ơ :ýǍǕƒ ƚ ơŀǉǈ

ƚùŽǍƨTdǈƨǒ ƚƪ 5Ǵǉǈ ǎ ǍŽƥ Ǒ5KʻǴǕƒ :ǑǪǴƒ ƚ ơŀǉǈ

## المبحث الأول

## حقّ التقاضي في دعوى المنافسة غير المشروعة

[illegible] (1) [illegible]

### المطلب الأول

### صفة المدّعي

[illegible] (2) [illegible] (3) [illegible]

1 [illegible] .32 [illegible] .39 [illegible]

2 - BLAISE Jean Bernard, op. cit., p. 369

3 - [illegible] 154-66 [illegible] 18 [illegible] 1386 [illegible] 8 [illegible] 66 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 - [illegible] .24

2 - [illegible] .115

3 - [illegible] .96 [illegible] .425

[illegible]

[illegible]

## المطلب الثاني

## حقّ النقابات والجمعيات في رفع الدعوى

[illegible]

[illegible][1]

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1 [illegible] 1884 [illegible]:
BLAISE Jean Bernard, op. cit., p. 369 ; et DIDIER Paul, op. cit., p. 620.
- [illegible] 137 [illegible] 1981 [illegible] 426.
- [illegible] 123.

ƒ Lkjbo̧ÜŎ̜ Lǝ̧̆ʃ yǒTŘʃ yư Ăĭʃ ƒŘNjĭ DžŽǀŘ ƒ ƒ͡! Ьǎ ĂŽƒƒ Ǵǥjžýƕĭ Ƙơ ɫȚ ƓƤ

ǕǓǕƺƚ » NƃƃĭDžŽ[1] 1920 Σ ƧǴǆž12 Ŏ5 ƧƃĢ́ !ƒ ýǆžƒ LǺĂǴƥ Lǆǆž1 1 ǕƃǴž

1 - RIPERT Georges & ROBLOT René, op. cit., p. 285.

4 - BLAISE Jean Bernard, op. cit., p. 369.

[illegible] .[1]

[illegible]

[illegible] .[3] 1965 [illegible] 21 [illegible]

[illegible] [4] [illegible] 12/ [illegible] .«

[illegible]

1 [illegible] 205.

2 [illegible] 206.

3 - BRENOT Oppettit & E. Le DOLLEY, JCP, commercial - consommation, 1983, fasc. 40.

4 [illegible] 89 - 02 [illegible].

[illegible] 1/12 [illegible]

[illegible] 2/12 [illegible] « [illegible] ».[1] [illegible]

## المطب الثاث

## صفة المدّعى عليه

[illegible] 136 [illegible]

1- [illegible] 996 [illegible] .100 [illegible] .43

[illegible]

[illegible] .[1]

[illegible][2] [illegible]

**[illegible]**

[illegible][3] [illegible]

1 [illegible] .208 [illegible] .625 [illegible]

2 - [illegible] . 75 [illegible]

3 - [illegible] .400 [illegible]

[illegible]

[illegible]

**[illegible]:**

[illegible]

## لمطب لربع

## تقلدعوى لمنفسةغير لشروعة

[illegible]

[illegible]

## الفرع الأول

## تقادم الدعوى في التشريع الفرنسي

[illegible] 89 [illegible] [1] [illegible] 30 [illegible] 10 [illegible] 30 [illegible]

## الفرع الثاني

## تقادم الدعوى في التشريع المصري

[illegible] 72 [illegible]

1 - GUYON Yves, op. cit., , p. 73.

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### تقادم الدعوى في التشريع الجزائري

## المبحث الثاني

## الإثبات في دعوى المنافسة غير المشروعة

[illegible][1] [illegible][2] [illegible]

[illegible]

[illegible][3] [illegible]

### المطلب الأول

### مظاهر إثبات الحالة

[illegible][4].

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1 - [illegible].

2 - GUYON Yves, op cit, p.72.

3 - [illegible] 302 [illegible] 146.

4 - [illegible] 219.

[illegible]

## المطب الثني

## انتقل المحكمة للمعاينة

[illegible]

[illegible]

[illegible] [1] [illegible]

[illegible]

1 - [illegible] 65.

[illegible]

## لمطب الثلث

## ندب لخبـراء

[illegible] (1) [illegible]

[illegible]

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1 - [illegible] 29 [illegible] 71 [illegible] 154/66.

[illegible]

[illegible] (1).

[illegible]

1 - [illegible] .33

## المبحث الثالث

## قواعد الانفصال

[illegible] [1]

[illegible] [2] [illegible]

## المطلب الأول

## الانفصال الوعي

[illegible] [3]

1 - RIPERT Georges & ROBLOT René, op. cit., p. 283.

2 - [illegible] .49

3 - GUYON Yves, op, cit. p. 882.

- [illegible] .49

- [illegible] .50

[illegible]

[illegible]

## الفرع الأول

## الاختصاص النوعي في القانون الفرنسي

[illegible]

[illegible]

1 - عزيز العكيلي: المرجع السابق، ص 50. و GUYON Yves, op. cit.,p.882.

2 - BLAISE Jean Bernard, op. cit., p. 369.

3 [illegible] ص 222.

4 - JCP, concurrence déloyale, compétence, 1977, p. 02.

[illegible] [1] [illegible]

[illegible]

[illegible] [2] [illegible]

[illegible] fait de contrefaçon [illegible] [3].

[illegible]

1 - RIPERT Georges & VERGÉ Emmanuel, op. cit., p. 565.

2 - [illegible] .223 [illegible]

3 - BLAISE Jean Bernard, op. cit., p. 369.

[illegible]

[illegible]

الفوع الثلي

لاختصل الوعي في القلون لجزلي

[illegible]

1 – JCP, competence, 1977, p. 03.

2 [illegible] .224

3 [illegible] المرجع السابق، ص 6. [illegible] المرجع السابق، 49-50

[illegible] ...» .

[illegible] [1].

## المطلب الثاني

## الاختصاص المحلي

[illegible] [2]. [illegible]

### الفرع الأوّل

### الاختصاص المحلّي في القانون الفرنسي

[illegible]

1- [illegible] 7 من تقنين الإجراءات المدنية [illegible] .14 [illegible]

2- [illegible] .17 [illegible] .110 [illegible]

[illegible]

## الفرع الثاني

## الاختصاص المحلّي في القانون الجزائري

[illegible]

[illegible]

[illegible]

[illegible]

1 - JCP, Compétence, op. cit., p. 3.

2 - [illegible]

3 - [illegible] .13

[illegible] [1]06/95 [illegible] /25 [illegible]

[illegible] « [illegible] ».

[illegible]

## المطلب الثالث

## الارتباط بين دعوى المنافسة غير المشروعة ودعوى التقليد

[illegible] [2] [illegible] [3] [illegible] 205 [illegible] » [illegible] [4].

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1 - [illegible] 25 [illegible] 1995 [illegible].

2 - [illegible]

3 - JCP, compétence, op. cit., p. 04..

4 - [illegible] 12 [illegible] 00 [illegible].

## لمبحث لرابع

## لجزاءات

[illegible]

[illegible][1] [illegible]

[illegible]

[illegible][2] [illegible]

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1 - [illegible] ص 860.
HOUIN Roger & BOULOK Bernard, op. cit., p. 73.
2 - BLAISE Jean Bernard, op. cit., p.369.

[illegible]

## المطلب الأول

## التعويض النقدي

[illegible][1].

[illegible].

[illegible].

[illegible][2] [illegible]

1 - [illegible] الموجز في القانون التجاري، المرجع السابق، ص 426. [illegible]:
JCP, Concurence Deloyal sanction, 1973, p. 2. et : RIPERT George & VERGE Emmanuel, op. cit., p. 567.

2 [illegible] ص 149.

[illegible] [1] [illegible] [2] [illegible] [3]

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1 - [illegible] .431

2 - JCP, Sanction 1973, p. 2.

- RIPERT George & ROBLOT René, op. cit., p.286

3 - [illegible] .347

[illegible]

[illegible] [2] [illegible] [3]

[illegible] [4]

1 [illegible] .234

2 - JCP, Sanctions, 1975, p.2.
3 - RIPERT George, & ROBLOT René, op. cit., p. 284.
4 - Ibid, p. 286.

## المطب الثلي

## التعوض لعني أو مايسمّى بلأولمر والتوهي

## التي قضي بها لمحكمة

[illegible] [1] [illegible].

[illegible] [2].

[illegible] 32 [illegible]:

« [illegible] ».

[illegible] [3] [illegible].

1 - JCP, Concurrence Déloyal, Mesures conservatoire et autres, 1978, p.1.

2 - [illegible] 132 [illegible] 71 [illegible].

3 - RIPERT George & ROBLOT René, op. cit., p.284.

[illegible] [1] [illegible]

[illegible] [2]:

[illegible]

[illegible]

[illegible] [3] [illegible] [4] [illegible]

1 [illegible] .427

2 [illegible] .237 [illegible] GUYON Yves, op. cit., p. 883.

3 [illegible] .356 [illegible] .121

4 [illegible] .353 [illegible] .438

[illegible]

[illegible] (1).

[illegible] (2).

[illegible] (3) [illegible]

[illegible] (4).

[illegible]

1 - [illegible] .146

2 - RIPERT George & ROBLOT René, op. cit., p.286

3 - HOUIN Roger & BOULOC Bernard, op. cit., p. 73.

4 - [illegible] .626

[illegible]

[illegible]

[illegible]

[illegible]

1 - [illegible] 303.

2 - DIDIER Paul, op. cit., p.621.

3 - JCP, Concurrence Déloyal, 1975, p.3.

[illegible]

## المطب الثلث

## نشر لحكم القضلي

[illegible]

[illegible]

[illegible]

1 - [illegible] .427 [illegible]

2 - [illegible] .96 [illegible] .150[illegible]

- PIROVANO Antoine, op. cit., p. 22.

3 - JCP,Concurrence Déloyal, sanctions, 1973, p.2.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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1 - DIDIER Paul, op. cit., p. 620.

2 - [illegible] .243

3 - JCP, Concurrence Déloyal, sanctions, 1973, p.2.

[illegible]

1 - [illegible] 491.
2 - [illegible] 437.
3 - [illegible] 626.
4 - [illegible] 305.

[illegible] [1]

[illegible]

[illegible]

1 - [illegible] 122 [illegible]. و GUYON Yves, op. cit., p.883.

# خاتمـة

[illegible][1]

[illegible]

[illegible]

[illegible]

[illegible]

1 - [illegible] 1996.

[illegible]

[illegible] [1] [illegible]

تمّ بحمد الله
وعونه

1 - [illegible] 06/95 [illegible]
[illegible]:
- [illegible] Liberté [illegible] 2002/03/02 [illegible] .07
- [illegible] Le Soir d'Algérie [illegible] 2004/04/25 [illegible] .24
- [illegible] Liberté [illegible] 2004/05/03 [illegible] .23

# [illegible]

## [illegible]:

**1- الكتب:**


1. [illegible] 1994.
2. ùùùùùù - [illegible] 1989.
3. ùùùùùù - [illegible] 1981.
4. [illegible] 1971.
5. [illegible] 1970.
6. ùùùùùùùùù - [illegible] 1964.
7. [illegible] 2001.
8. [illegible] 1973 – 1974.
9. ùùùùùùùùùù - [illegible] 1975.
10. [illegible] (K.[illegible]).
11. [illegible] 2001.

12. [illegible] .1989

13. [illegible] 1972

14. [illegible] .1988

15. [illegible] .1992

16. [illegible] .1983

17. [illegible] .52 [illegible]

18. [illegible] .1995

19. [illegible] .2000

20. [illegible] .1974

21. [illegible] .1994

22. [illegible] .1949

23. [illegible] .1969

24. [illegible] .1945

25. [illegible] .1985

26 [illegible] 1971.

27. [illegible] 1982.

28 [illegible] 1999.

## 2 - الرسائل الجامعية:

1 [illegible] 1990.

2 – [illegible] 2002.

3 - [illegible] 2004.

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1 - [illegible] 1974 [illegible] 16 [illegible].

2 [illegible] 1975 - 1976.

3 [illegible] 1997.

4 - [illegible] 4 [illegible] 1991.

5 - [illegible] 1 [illegible] 1994.

6 - [illegible] 2 [illegible] 1996.

7 - [illegible] 2 [illegible] 01 [illegible] 1997.

**4 – النصوص القانونية :**

1. [illegible] 438-96 [illegible] 96/12/07 [illegible] .76 [illegible]

2. [illegible] 57-66 [illegible] 19 [illegible] 1966 [illegible] 23 [illegible] 22 [illegible] 1966.

3. [illegible] 154 – 66 [illegible] 18 [illegible] 1386 [illegible] 8 [illegible] 1966 [illegible].

4. [illegible] 156 – 66 [illegible] 8 [illegible] 1966 [illegible].

5. [illegible] 58-75 [illegible] 20 [illegible] 1395 [illegible] 26 [illegible] 1975 [illegible].

6. [illegible] 59-75 [illegible] 26 [illegible] 1975 [illegible] 80-93 [illegible] 1993/04/20. [illegible] 27-96 [illegible] 1996/12/09.

7. [illegible] 06 – 95 [illegible] 23 [illegible] 1415 [illegible] 25 [illegible] 1995 [illegible] 1995/02/22.

8. [illegible] 02 – 89 [illegible] 07 [illegible] 1989 [illegible] 8 [illegible] 1989.

9. [illegible] 14-90 [illegible] 1990/06/02 [illegible] 30-91 [illegible] 1991/12/21 [illegible].

10. [illegible] 366 - 90 [illegible] 90/11/10 [illegible].

11. [illegible] 276-92 [illegible] 6 [illegible] 1992 [illegible] Code de déontologie des pharmaciens.

## [illegible]:

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